

Internal Revenue Service  
**memorandum**

date: MAR 14 1991

to: Powell W. Holly, Jr.  
District Counsel, Hartford, CT

from: Technical Assistant, Office of Assistant Chief Counsel  
(Employee Benefits and Exempt Organizations)

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subject: Connecticut Deputy Sheriffs

This is in reply to your memorandum of January 2, 1991, wherein you ask several questions concerning the treatment of Connecticut Sheriffs for federal employment tax purposes.

In your first question, you refer to a letter ruling dated April 9, 1990, which concluded that the sheriffs in question were employees of the state for federal employment tax purposes. They would be subject to the taxes imposed under the Federal Insurance Contributions Act (FICA) if they were covered under a section 218 agreement. See section 3121(b)(7) of the Internal Revenue Code. We have been advised that they are not covered. However, the state may be liable for the Medicare portion under the FICA if they were hired after March 31, 1986. See section 3121(u)(2) of the Code. (Beginning July 1, 1991, any employee of a state or political subdivision thereof, who is not a member of a retirement system of such state or political subdivision, is subject to the full FICA taxes, regardless of the date of hire. See section 3121(b)(7)(F).)

There is, of course, no liability for the taxes imposed under the Federal Unemployment Tax Act (FUTA). See section 3306(c)(7). The state is responsible for withholding income tax from the wages paid to these sheriffs. See section 3401(c).

You ask whether these sheriffs are subject to the social security and medicare taxes imposed under the Self-Employment Contributions Act (SECA). Section 1402(c) of the Code provides that the term "trade or business" shall not include the performance of the functions of a public office, other than the functions of a public office where the individual is compensated solely on a fee basis and which are not covered under a section 218 agreement. The sheriffs in this case are not compensated on a fee basis. Accordingly, it is our view that these sheriffs are not subject to the taxes imposed by the SECA.

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Powell W. Holly, Jr.  
District Counsel, Hartford District

Your second question concerns deputy sheriffs who are primarily process servers who are paid by the individuals for whom the service is provided. You also advise us that the state issues Form 1099-MISC based on the fees reported to the state by the sheriffs. You want to know whether these sheriffs are independent contractors. Unfortunately, we are unable to answer your question. Any conclusion we may reach would affect the deputy sheriffs and therefore we believe the proper procedure would be for the state to request a determination from the district director concerning the status of the deputy sheriffs for federal employment tax purposes. The Form SS-8 is the normal vehicle for accomplishing this. For your information, Rev. Rul. 70-574 concludes that process servers who serve legal papers for a company on behalf of various attorneys, determine their own method of operation, who are required to report only the results of their services to the company, and are only paid for each successful service of papers, are not employees of the company.

We would also want to know how these sheriffs are hired, what is their connection to the state, whether they take an oath, etc. It is very likely these sheriffs are employees of the state, but because they are paid on a fee basis, they are subject to the SECA taxes. We think, in any event, that the state is not technically responsible for issuing Form 1099, but any final conclusion on this point should await final development of this matter.

Your third question concerns which individual or office in the state should be notified by the district if employment tax audits are instituted. If a Form 941 has been filed, we suggest that you contact the entity that filed it. If there is no Form 941, we can only suggest that the state attorney general's office and/or the specific agency that is proposed to be audited be contacted.

(Signed) Ronald L. Moore

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RONALD L. MOORE